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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,474	03/01/2004	William Paul	PWL-10003/15	9935
25006 7590 06/27/2007 GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			EXAMINER WENDELL, MARK R	
			ART UNIT 3609	PAPER NUMBER
			MAIL DATE 06/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/790,474		PAUL, WILLIAM	
	<b>Examiner</b>		<b>Art Unit</b>	
	Mark R. Wendell		3609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/3/2004</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claim 4 recites the limitation "floor and ceiling tracks" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "floor and ceiling tracks" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "floor and ceiling tracks" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3609

Claims 1-2, 4, 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kostecky (US 3845601). Kostecky illustrates in Figures 1-3 a track system, with several elongated bodies comprising:

- At least one elongated body with a substantially "U" shape and having a bottom extending face (3) and a first and second sides (4);
- A plurality of polygonal shaped apertures (5,7,8).

Regarding claims 2 and 4, Kostecky illustrates two parallel bodies (top and bottom) with interconnecting metal studs (20).

Regarding claim 7, Kostecky illustrates in Figure 1 a lip edge (6), which engages a succeeding body, or bracket (9).

Regarding claim 8, Kostecky illustrates in Figure 1 a lip edge (6) exhibiting apertures (8) having fastening means.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3609

Claims 3, 11-12, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostecky (US 3845601). It is described above what is disclosed by Kostecky.

However, Kostecky does not disclose the apertures on the elongated bodies being diamond shape. It would have been obvious matter of design choice to modify the apertures of Kostecky to be diamond shape since applicant has not disclosed that having a diamond shaped aperture solves any stated problem or provides any unexpected results.

Regarding claims 11 and 17, Kostecky discloses pairs of apertures but does not disclose them as having a specific diameter, being rounded, or having a specific distance limitation. It would have been obvious matter of design choice to modify the apertures of Kostecky to be rounded with a diameter and have a distance limitation of 4 inches, since applicant has not disclosed that having rounded apertures or having the apertures a distance of 4 inches apart solves any stated problem or provides any unexpected results. The examiner notes that regarding claim 17, the polygonal apertures of Kostecky could provide passageways for conduit lines.

Regarding claim 12, Kostecky discloses the basic claim structure on the instant application but does not disclose specific dimensions. Applicant fails to show criticality or provide any unexpected results for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in the claim.

Art Unit: 3609

Claims 5-6, 9-10, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostecky (US 3845601) in view of Daudet (US 6301854). It is described above what is disclosed by Kostecky. However, Kostecky does not disclose the use of upward extending tabs in the track bottom. Daudet discloses pairs of tabs (30), extending upward, in Figure 10 for securing studs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kostecky by adding upward tabs, as disclosed by Daudet, in order to better secure the studs to the track.

Regarding claim 10, Daudet discloses the tabs punched out and corresponding to each stud, which correspond to each side aperture, therefore having the tabs correspond to each side aperture.

Regarding claim 16, Kostecky illustrates a track system incorporated into a wall structure comprising:

- An upper and lower elongated body (3) exhibiting a three-dimensional profile that has first and second extending sides (4);
- A plurality of polygonal apertures (5, 8);

Kostecky does not disclose upwardly extending tabs with interacting studs. Daudet discloses pairs of tabs (30), extending upward, in Figure 10 for securing studs. It would have been obvious to one having ordinary skill in the art at the time the invention was

Art Unit: 3609

made to modify Kostecky by adding upward tabs, as disclosed by Daudet, in order to better secure the studs to the track.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostecky (US 3845601) and Daudet (US 6301854), as applied to claims 5-6, 9-10, 16 and in further view of Lee (US 5942213). It is described above what is disclosed by Kostecky in view of Daudet. However Kostecky in view of Daudet does not disclose the use of indicia on the track body. Lee discloses indicia on construction material in an ascending and descending manner (Figure 2) on the first and second sides of the elongated body (200). Lee also illustrates in Figure 2 the indicia extending along opposite edges of the bottom face of elongated body (200). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kostecky in view of Daudet by adding indicia, as disclosed by Lee, in order to expedite installation of the tracks and to aid in the cutting of tracks since laborers would be able to skip the step of measuring.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Liang (US 5274973), Meyer (5157883), and Meyer et al. (5325651) all show various stud tracks.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark R. Wendell whose telephone number is (571) 270-

Art Unit: 3609

3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on (571) 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor Batson  
Supervisory Patent Examiner  
Art Unit 3609

MRW  
June 18, 2007